

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CENTER FOR BIOLOGICAL DIVERSITY,
378 N. Main Avenue
Tucson, AZ 85701,

Plaintiff,

v.

BUREAU OF LAND MANAGEMENT,
1849 C Street, N.W. # 5665
Washington, D.C. 20240,

Defendant.

Case No.: _____

**COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION

1. Plaintiff Center for Biological Diversity (“the Center”) challenges the Bureau of Land Management’s (“BLM”) ongoing violations of the Freedom of Information Act, 5 U.S.C. § 552, *as amended* (“FOIA”), resulting from the agency’s failure to timely respond to a request for geographic information system (“GIS”) mapping technology data layers, including all associated metadata, shapefile and/or geodatabase files, for onshore federal oil and gas leasing and development in the United States (“National Oil and Gas GIS Layers”).

2. On August 30, 2018, the Center submitted its FOIA request to BLM headquarters. The Center requested the National Oil and Gas GIS Layers to allow the Center and the public to better understand the federal government’s oil and gas leasing program and its potential effects on natural resources, public lands, water, and wildlife. Although 244 working days have passed since the Center submitted its FOIA request, to date BLM has not provided any National Oil and Gas GIS Layers. Accordingly, the Center challenges BLM’s FOIA violations resulting from its failure to respond to the Center’s request and seeks declaratory and injunctive relief to require BLM to search for and produce all responsive records without further delay.

JURISDICTION AND VENUE

3. This Court has jurisdiction under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331 because this action arises under FOIA and the Declaratory Judgment Act, *id* §§ 2201-2202.

4. Venue vests in this Court under 5 U.S.C. § 552(a)(4)(B), which provides venue for FOIA cases in this district and because the responsive records may be found in this district.

5. Declaratory relief is appropriate under 28 U.S.C. § 2201.

6. Injunctive relief is appropriate under 28 U.S.C. § 2202 and 5 U.S.C. § 552(a)(4)(B).

PARTIES

7. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a national, non-profit conservation organization with offices throughout the United States. The Center has more than 69,500 members. BLM's failure to comply with FOIA impairs the Center's ability to provide full, accurate, and current information to the public on a matter of public interest. Absent this information, the Center is hampered in its ability to advance its mission to protect native species and their habitat. The Center and its members are harmed by BLM's ongoing violations of FOIA, which are preventing the Center from gaining a full understanding of BLM's activities, priorities, and decision-making regarding onshore federal oil and gas.

8. Defendant BUREAU OF LAND MANAGEMENT is a federal agency within the U.S. Department of the Interior. BLM is responsible for managing public lands for a variety of uses such as energy development, livestock grazing, recreation, and timber harvesting while ensuring natural, cultural, and historic resources are maintained for present and future uses. BLM is in possession and control of the records that the Center seeks, and as such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f) and is responsible for fulfilling the Center's FOIA request.

STATUTORY BACKGROUND

9. FOIA's basic purpose is government transparency. It establishes the public's right to access federal agency records, with certain narrow exceptions. 5 U.S.C. § 552(b)(1)-(9).

10. Within 20 working days of receiving a FOIA request, an agency must determine if it will release requested records and notify the requester of its determination and the reasons therefore, the right to seek assistance from the FOIA Public Liaison, and the right to appeal an adverse agency determination. *Id.* § 552(a)(6)(A)(i).

11. Only in "unusual circumstances" may an agency extend the time to make a final determination by no more than 10 working days, but it must provide written notice to the requester setting forth the unusual circumstances for the extension and "the date on which a determination is expected to be dispatched." *Id.* § 552(a)(6)(B)(i). If it provides written notice that it cannot process the request within the specified time limit, the agency shall provide "an opportunity to limit the scope of the request so that it may be processed within" the statutory time limit or "an opportunity to arrange with the agency an alternative timeframe for processing the request or a modified request" and shall make available its FOIA Public Liaison to "assist in the resolution of any disputes between the requester and the agency." *Id.* § 552(a)(6)(B)(ii).

12. FOIA requires each agency to undertake a search for requested records in a manner reasonably calculated to locate all records responsive to the FOIA request. *Id.* § 552(a)(3)(C)-(D). Using the date of a FOIA request as the cut-off date for its search is not always reasonable, while using the date that the agency commences its search has consistently been found to be reasonable.

13. FOIA requires federal agencies to promptly disclose requested records. *Id.* § 552(a)(3)(A), (a)(6)(C)(i).

14. In certain limited instances, an agency may withhold records under one or more of nine specific exemptions. *Id.* § 552(b). These exemptions must be narrowly construed in light of FOIA’s dominant objective of disclosure, not secrecy.

15. FOIA places the burden on the agency to prove that it may withhold responsive records from a requester. *Id.* § 552(a)(4)(B).

16. FOIA provides this Court jurisdiction “to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.” *Id.*

17. Alternatively, an agency’s response to a FOIA request is subject to judicial review under the APA, which confers a right of judicial review on any person who is adversely affected by agency action, 5 U.S.C. § 702, and authorizes district courts to compel agency action that is unlawfully withheld or unreasonably delayed. *Id.* § 706(1). District courts must set aside any agency action that is found to be “arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.” *Id.* § 706(2)(A).

FACTUAL BACKGROUND

18. On August 30, 2018, the Center sent a FOIA request to BLM requesting “GIS data layers, including all associated metadata, shapefile and/or geodatabase files, relating to onshore federal oil and gas from BLM.”

19. On September 28, 2018, BLM emailed the Center acknowledging the request, assigning it tracking number “BLM-2018-01314,” and placing the FOIA request on the “exceptional/voluminous processing track.”

20. On October 11, 2018, the Center emailed asking why BLM placed the Center's FOIA request on the exceptional/voluminous track. To the Center's knowledge, BLM never responded to the October 11, 2018 email.

21. On March 4, 2019, the Center sent a letter informing BLM that it had violated FOIA's statutory deadline for a determination on the Center's FOIA request.

22. On March 6, 2019 BLM sent the Center an email stating that the agency was "still searching for and gathering records for your request."

23. Contrary to its September 28, 2018 claim that the Center's request was "exceptional/voluminous," on April 4, 2019, BLM sent the Center a final determination letter stating that "information requested for numbers 1-4 can all be found/accessed publicly, via <https://reports.blm.gov/reports.cfm?application=LR2000>," that "the information requested for numbers 5-10 are already available on www.BLM.gov," and that the Center could download tables "[b]y selecting 'Energy and Minerals' from the 'Programs' drop down, 'Oil & Gas' from the left hand column, and 'Oil and Gas Statistics' also on the left hand column." BLM directed the Center to Tables 1 through 10 and Table 11, which provide data for FY2008 through FY2017, and stated that the FY2018 data is currently under review and is not yet available."

24. Contrary to BLM's statements that the responsive information is publicly accessible, GIS data layers are not available on public websites offered by BLM in its April 4, 2019 letter.

25. On May 13, 2019 the Center appealed BLM's final determination to the Department of the Interior ("DOI") challenging the adequacy of BLM's search and its failure to provide responsive records.

26. Since the Center submitted its appeal, DOI has failed to acknowledge the appeal or provide any other correspondence regarding the Center's appeal or reasons for delay.

27. Pursuant to FOIA, 5 U.S.C. § 552(a)(6)(A)(ii), a determination on this appeal was due 20 business days after DOI's receipt, or June 11, 2019.

28. On July 2, 2019 the Center sent a letter notifying DOI that it had violated FOIA's statutory deadline for a determination on the Center's appeal and offering to assist the agency because "the Center does not wish to initiate litigation at this time because it believes that a cooperative approach is a more productive way to manage and resolve Interior delay."

29. As of the date of this filing, DOI has not made a determination on the Center's May 13, 2019 FOIA appeal or provided any response to the Center's July 2, 2019 letter.

30. As of the date of this filing, which is 50 working days after the 20 working day appeal determination deadline of June 11, 2019, the Center has received no records and no additional communications from BLM regarding the Center's August 30, 2018, FOIA request since the inadequate April 4, 2019 Determination Letter.

31. Upon information and belief, BLM has failed to conduct a search for records responsive to the Center's August 30, 2018 FOIA request.

32. BLM's failure to conduct an adequate search and failure to provide all responsive records to the Center undermine FOIA's primary purpose of government transparency.

33. The Center has been required to expend resources to prosecute this action.

FIRST CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT

(BLM failed to conduct an adequate search for responsive records)

34. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

35. The Center has a statutory right to have BLM process its FOIA requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). BLM is violating the Center's rights in this regard by unlawfully failing to undertake a search reasonably calculated to locate all records that are responsive to the Center's FOIA request.

36. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to BLM in the foreseeable future.

37. The Center's organizational activities will be adversely affected if BLM continues to violate FOIA's requirement to undertake a search that is reasonably calculated to locate records that are responsive to the Center's FOIA request.

38. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, BLM will continue to violate the Center's right to receive public records under FOIA.

SECOND CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT

(BLM failed to promptly disclose records responsive to the Center's FOIA request)

39. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

40. BLM is violating FOIA and implementing regulations by refusing to promptly disclose the records responsive to the Center's FOIA request.

41. The Center has a statutory right to the records it seeks.

42. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to BLM in the foreseeable future.

43. The Center's organizational activities will be adversely affected if BLM continue to violate FOIA's disclosure provisions as it has in this case.

44. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, BLM will continue to violate the Center's right to receive public records under FOIA.

THIRD CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT

(BLM's failure to disclose all non-exempt records responsive to the Center's FOIA request)

45. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

46. The Center has a statutory right to the records it seeks and there is no legal basis for BLM to assert that any of FOIA's nine exemptions to mandatory disclosure apply to withhold these records from the Center. *See* 5 U.S.C. § 552(b)(1)-(9).

47. To the extent BLM is invoking any of these exemptions, BLM is unlawfully withholding from disclosure records that are responsive to the Center's FOIA Request.

48. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to BLM in the foreseeable future.

49. The Center's organizational activities will be adversely affected if BLM continues to violate FOIA's disclosure provisions.

50. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, BLM will continue to violate the Center's right to receive public records under FOIA.

FOURTH CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT

(BLM's failure to provide reasonably segregable portions of any lawfully exempt records)

51. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

52. The Center has a statutory right to any reasonably segregable portion of a record that may contain information lawfully subject to any of FOIA's exemptions. 5 U.S.C. § 552(b).

53. BLM is violating the Center's rights in this regard to the extent it is unlawfully withholding reasonably segregable portions of any lawfully exempt records that are responsive to the Center's FOIA request.

54. Based on the nature of the Center's organizational activities, it will undoubtedly continue to employ FOIA's provisions in record requests to BLM in the foreseeable future.

55. The Center's organizational activities will be adversely affected if BLM is allowed to continue violating FOIA's disclosure provisions as it has in this case.

56. Unless enjoined and made subject to a declaration of the Center's legal rights by this Court, BLM will continue to violate the Center's right to receive public records under FOIA.

FIFTH CLAIM FOR RELIEF
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT
(In the Alternative to the First through Fourth Claim)

(Agency action unlawfully withheld or unreasonably delayed)

57. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

58. BLM is unlawfully withholding agency action by failing to comply with FOIA's mandates as a result of its failure and refusal to search for and disclose records responsive to the Center's FOIA request. BLM's failures constitute agency action that is unlawfully withheld pursuant to the APA, 5 U.S.C. § 706(1).

59. Alternatively, BLM is unreasonably delaying agency action by failing to comply with FOIA's mandates as a result of its failure and refusal to search for and disclose records

responsive to the Center's FOIA request. BLM's failures constitute agency action unreasonably delayed pursuant to the APA, 5 U.S.C. § 706(1).

60. As alleged above, BLM's failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and violates its statutory duties under the APA.

61. The Center has suffered a legal wrong as a result of BLM's failure to comply with the mandates of FOIA. As alleged above, BLM is violating its statutory duties under the APA and injuring the Center's interests in public oversight of governmental operations.

62. The Center has no other adequate remedy at law to redress the violations noted above.

63. Plaintiff is entitled to judicial review under the APA, 5 U.S.C. § 702.

SIXTH CLAIM FOR RELIEF
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT
(In the Alternative to the First Through Fifth Claims)

(Arbitrary and capricious agency action)

64. Plaintiff re-alleges and incorporates by reference the allegations made in all preceding paragraphs.

65. BLM is violating FOIA's statutory mandates by failing to search for and disclose records responsive to the Center's FOIA request. By violating FOIA's statutory mandates, BLM's actions are arbitrary, capricious, an abuse of discretion, or not in accordance with the law pursuant to the APA, 5 U.S.C. § 706(2)(A).

66. As alleged above, BLM's failure to comply with the mandates of FOIA has injured the Center's interests in public oversight of governmental operations and is in violation of the agency's statutory duties under the APA.

67. The Center has suffered a legal wrong as a result of BLM's failure to comply with the mandates of FOIA. As alleged above, BLM is violating its statutory duties under the APA and injuring the Center's interests in public oversight of governmental operations.

68. The Center has no other adequate remedy at law to redress the violations noted above.

69. The Center is entitled to judicial review under the APA, 5 U.S.C. § 702.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

1. Order Defendant to conduct searches reasonably calculated to locate all records responsive to Plaintiff's FOIA request, utilizing a cut-off date for such searches that is the date the searches are conducted, and provided Plaintiff, by a date certain, with all responsive records and reasonably segregable portions of lawfully exempt records sought in this action.

2. Declare that Defendant's failures to timely undertake a search for and disclose to Plaintiff all records responsive to Plaintiff's FOIA request, as alleged above, are unlawful under FOIA, U.S.C. § 552(a)(6)(A)(i), or in the alternative, are agency action that has been unlawfully withheld or unreasonably delayed, 5 U.S.C. § 706(1), or are arbitrary, capricious, an abuse of discretion, or not in accordance with law, 5 U.S.C. § 706(2).

3. Award Plaintiff its costs and reasonable attorney fees pursuant to 5 U.S.C. § 552(a)(4)(E) or 28 U.S.C. § 2412.

4. Grant such other and further relief as the Court may deem just and proper.

DATED: August 21, 2019

Respectfully submitted,

/s/ Douglas W. Wolf

Douglas W. Wolf (D.C. Bar No. 481046)

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